

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
WEDNESDAY, DECEMBER 9, 2015**

PRESENT: Peter F. Murphy, Springfield District
Frank A. de la Fe, Hunter Mill District
Ellen J. Hurley, Braddock District
John C. Ulfelder, Dranesville District
James T. Migliaccio, Lee District
Julie Strandlie, Mason District
Earl L. Flanagan, Mount Vernon District
Kenneth A. Lawrence, Providence District
John L. Litzenberger, Jr., Sully District
James R. Hart, Commissioner At-Large
Janyce N. Hedetniemi, Commissioner At-Large
Timothy J. Sargeant, Commissioner At-Large

ABSENT: None

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The meeting was called to order at 8:16 p.m., by Chairman Peter F. Murphy, in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

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COMMISSION MATTERS

Commissioner Hurley announced that the Planning Commission would participate in a tour of Upper Bailey's Elementary School in the Mason District at 7:00 p.m. on Monday, December 14, 2015. She added that this tour had been included on the County calendar.

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Chairman Murphy requested that Commissioners turn in their disclosure forms to Planning Commission Director Jill Cooper by Tuesday, December 15, 2015.

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Commissioner Strandlie MOVED THAT THE PLANNING COMMISSION DEFER THE PUBLIC HEARING FOR PCA 75-5-158-03, DRW, INC., TO A DATE CERTAIN OF WEDNESDAY, FEBRUARY 10, 2016.

Commissioner Sargeant seconded the motion, which carried by a vote of 12-0.

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Commissioner Hurley stated that SE 2015-BR-015, Suoliang “Leon” Xie, which was a request for a congregate living facility for eight students of varying ages at 4008 Taylor Road, was currently scheduled to be heard by the Planning Commission on Wednesday, January 27, 2016. She added that the applicant had met with the Braddock District Land Use Committee and concerns had been raised regarding this requested use, as well as the potential countywide implications of permitting such a use. Commissioner Hurley then explained that Braddock District Supervisor John Cook had directed staff to review the requested use. Subsequently, she announced that this public hearing had been administratively deferred to Thursday, May 12, 2016, to allow staff sufficient time to conduct such a review.

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PCA 87-S-039-6 – FAIRFAX CORNER (ARCHITECTURAL DETAILS FOR BUILDING B)
(Braddock District)

(Begin Verbatim Transcript)

Commissioner Hurley: And second, Apple Federal Credit Union is proposing to build its new Headquarters in Fairfax Corner, and also to build a six-story parking structure that will serve the new building, as well as the movie theater and the rest of the area. Proffer 35 of the Fairfax Corner package, PCA 87-S-039-6, requires the applicant to submit architectural details of the new building and associated parking structures and landscape details of the adjacent plaza and pedestrian amenities to the Planning Commission for review and administrative approval to determine whether the designs meet the character of the existing development. Therefore, the architectural details of the project need our approval prior to obtaining building permits to break ground in January. Timing is critical because, until the new parking structure is at least partially open, parking will be in short supply. The parking shortage from January to May will be alleviated because the movie theater will be performing planned renovations at the same time the new parking structure is under construction. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION DETERMINE THAT THE ARCHITECTURAL DETAILS OF BUILDING B AND ITS ASSOCIATED PARKING STRUCTURE AND THE LANDSCAPE DETAILS OF THE ADJACENT PLAZAS AND PEDESTRIAN AMENITIES SURROUNDING BUILDING B, AS SUBMITTED, MEET THE CHARACTER OF THE EXISTING FAIRFAX CORNER DEVELOPMENT AND ITS PROFFERS AND HAVE SATISFIED PROFFER 35 AS IT RELATES TO BUILDING B, AND THEREFORE THOSE DETAILS ARE APPROVED.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant; also by the Chair. Is there a discussion of the motion? All those in favor of the motion as articulated by Ms. Hurley, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

(The motion carried by a vote of 12-0.)

(End Verbatim Transcript)

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FS-D15-19 – DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES,
McLean Community Center, 1234 Ingleside Avenue

(Begin Verbatim Transcript)

Commissioner Ulfelder: I CONCUR WITH STAFF'S CONCLUSION THAT THE PROPOSAL BY THE DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES TO CONSTRUCT AN APPROXIMATELY 7,265 SQUARE-FOOT ADDITION TO THE MCLEAN COMMUNITY CENTER, AND ALSO TO RENOVATE APPROXIMATELY 33,000 SQUARE FEET OF THE MCLEAN COMMUNITY CENTER, LOCATED AT 1234 INGLESIDE AVENUE IN MCLEAN, SATISFIES THE CRITERIA OF LOCATION, CHARACTER, AND EXTENT, AS SPECIFIED IN *VIRGINIA CODE* 15.2-2232 AS AMENDED. THEREFORE, MR. CHAIRMAN, I MOVE THAT THE PLANNING COMMISSION FIND THE APPLICATION FS-D15-9 [*sic*] SUBSTANTIALLY IN ACCORD WITH THE PROVISIONS OF THE ADOPTED COMPREHENSIVE PLAN.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of the motion? All those in favor of the motion to concur with the "feature shown" determination in item "FS-D15-19," say aye.

Commissioner: Aye.

Chairman Murphy: Opposed?

Commissioner Ulfelder: It's "-9" Mr. Chairman, not "19," I believe. Let me double check the front.

Commissioner Hart: No, it's "-19."

Commissioner Ulfelder: It's "-19." I'm sorry, that's correct. You are correct.

Chairman Murphy: Okay. All those in favor of the motion, say aye.

Commissioner: Aye.

Chairman Murphy: Opposed? Motion carries.

(The motion carried by a vote of 12-0.)

(End Verbatim Transcript)

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SEA 79-D-071-02 – THE TEA CENTER, LLC (Decision Only)
(The public hearing on this application was held on November 19, 2015.)

(Begin Verbatim Transcript)

Commissioner Ulfelder: Thank you, Mr. Chairman. I have a decision only this evening involving a Special Exception application for a before- and after-school program in the Dranesville District for The Tea Center, LLC. Would the applicant and her representative come on down? If you will recall, at the public hearing some questions were raised about the provisions proposed – development conditions concerning the – how the school could be expanded from between 40 to 70 students. And there was expressed in the original proposed development conditions a – sort of an administrative process combined with a full operational traffic study analysis. After taking a look at that, after – at the suggestion of Commissioner Hart checking with the County Attorney's Office, it was determined that that raised some serious questions and we have revised the conditions to eliminate that. So, now what we're looking at is an application with a set of proposed development conditions that would allow a program for up to 40 students. And that's reflected in - without the additional expansion and – so that if in the future the applicant decides she wants to expand, she would have to come back with a Special Exception Amendment and would likely be required still to have the traffic analysis as part of that process. We've also cleaned up a couple of the other conditions in the proposed development conditions. So with that, I first would like to ask the applicant or her representative as to whether they would confirm for the record that you're in agreement with the proposed development conditions now dated November 30th, 2015.

Jane Kelsey, Esquire, Applicant's Agent, Jane Kelsey & Associates, Inc.: Jane Kelsey, representing the applicant. I will ask Ms. Mendis to respond to that, please.

Commissioner Ulfelder: Okay, thank you.

Mayosha H. Mendis, Applicant: Yes.

Commissioner Ulfelder: Okay, fine. Thank you very much. With that Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SEA 79-D-071-02, SUBJECT TO DEVELOPMENT CONDITIONS DATED NOVEMBER 30TH, 2015.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SEA 79-D-071-02, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. –

Commissioner Hurley: Mr. – Mr. Chairman, I need to abstain. I was not present for the public hearing.

Chairman Murphy: All right.

Commissioner Migliaccio: The same –

Chairman Murphy: Okay, Mr. Migliaccio and Ms. Hurley abstain; not present for the public hearing.

Commissioner Strandlie: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Strandlie: I was also not here – not here.

Chairman Murphy: I'm sorry?

Commissioner Strandlie: I also would like to abstain. I was not here for the hearing on November 19th.

Chairman Murphy: Okay, three abstentions.

Commissioner Ulfelder: Just before Thanksgiving.

Chairman Murphy: Mr. Ulfelder.

Commissioner Ulfelder: I also MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE FOLLOWING MODIFICATIONS:

- MODIFICATION OF THE PERIPHERAL PARKING LOT LANDSCAPING REQUIREMENT ALONG THE BALLS HILL ROAD FRONTAGE OF THE APPLICATION PROPERTY IN FAVOR OF THE EXISTING LANDSCAPE, AS SHOWN ON THE SEA PLAT; AND
- MODIFICATION OF THE TRANSITIONAL SCREENING AND BARRIER REQUIREMENTS ALONG THE SOUTHERN PROPERTY LINE IN FAVOR OF THE EXISTING CONDITIONS, AS SHOWN ON THE SEA PLAT.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion of that motion? All those in favor of the motion as articulated by Mr. Ulfelder, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries, same abstentions.

(Each motion carried by a vote of 9-0-3. Commissioners Hurley, Migliaccio, and Strandlie abstained from the vote.)

(End Verbatim Transcript)

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Commissioner de la Fe MOVED THAT THE PLANNING COMMISSION RECESS AND GO INTO CLOSED SESSION FOR A BRIEFING BY LAWENFORCEMENT OR EMERGENCY SERVICE OFFICIALS TO DISCSS REPORTS OR PLANS RELATING TO THE SECURITY OF THE GOVERNMENT CENTER, AND THE SAFETY OF PERSONS USING THIS BUILDING, ALL AS PERMITTED BY *VIRGINIA CODE* SECTION 2.2-3711(19).

Commissioner Hart seconded the motion which carried by a vote of 12-0.

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Upon returning from closed session, Commissioner de la Fe MOVED THAT THE COMMISSION MEMBERS CERTIFY TO THE BEST OF EACH MEMBER'S KNOWLEDGE THAT ONLY SUCH PUBLIC BUSINESS MATTER AS ARE LAWFULLY EXEMPT FROM THE OPEN MEETING REQUIREMENTS AND ONLY SUCH MATTERS AS WERE IDENTIFIED IN THE MOTION BY WHICH A CLOSED SESSION, THE CLOSED MEETING, WAS CONVENED WERE HEARD, DISCUSSED OR CONSIDERED DURING THE CLOSED SESSION.

Commissioners Flanagan and Lawrence seconded the motion which carried by a vote of 12-0.

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ORDER OF THE AGENDA

Secretary Hart established the following order of the agenda:

1. PUBLIC FACILITIES MANUAL (PFM) AMENDMENT – NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA) ATLAS 14 RAINFALL DATA (Countywide)
2. SEA 87-L-012-02 – R JOUN ENTERPRISE LLC; ROLAND JOUN, TRUSTEE & MARIA JOUN, TRUSTEE
3. SE 2015-SP-022 – EILEEN MEADE d/b/a MEADE FAMILY DAYCARE

This order was accepted without objection.

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PUBLIC FACILITIES MANUAL (PFM) AMENDMENT –
NATIONAL OCEANIC AND ATMOSPHERIC

ADMINISTRATION (NOAA) ATLAS 14 RAINFALL DATA –

The proposed amendments update tables, plates, and example problems in the PFM to incorporate National Oceanic and Atmospheric Administration (NOAA) Atlas 14 rainfall data. Some of the new rainfall intensity-duration-frequency data was generated using regression equations specific to Fairfax County, based on NOAA Atlas 14 rainfall data, from the Virginia Department of Transportation (VDOT) Drainage Manual. This update also includes several new plates, the deletion of several existing plates, and some additional explanatory material for the acceptable hydrologic methods included in the PFM. COUNTYWIDE.
PUBLIC HEARING.

Commissioner Hart asked that Chairman Murphy ascertain whether there were any speakers for this application. There being none, he asked that presentations by staff and the applicant be waived, and the public hearing closed. No objections were expressed; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Hart for action on this item.

(Begin Verbatim Transcript)

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Chairman Murphy: Public hearing is closed; recognize Mr. Hart.

Commissioner Hart: Thank you, Mr. Chairman. This is a straightforward amendment. It has staff's favorable recommendation with which I concur. And therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD ADOPT THE PROPOSED AMENDMENT TO CHAPTERS 6 AND 13 OF THE PUBLIC FACILITIES MANUAL AS SET FORTH IN THE STAFF REPORT DATED NOVEMBER 17, 2015, WITH THE REVISION TO SECTION 6-0807, INCREMENTAL UNIT HYDROGRAPH, 1 INCH OF RUNOFF PER ACRE, DATED DECEMBER 9, 2015, DISTRIBUTED TO THE PLANNING COMMISSION THIS EVENING.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the motion? All those in favor of the motion as articulated by Mr. Hart, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

(The motion carried by a vote of 12-0.)

(End Verbatim Transcript)

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SEA 87-L-012-02 – R JOUN ENTERPRISE LLC; ROLAND JOUN, TRUSTEE & MARIA JOUN, TRUSTEE – Appl. under Sects. 4-604, 7-607, and 9-611 of the Zoning Ordinance to amend SE 87-L-012 previously approved for a service station and quick service food store to permit site modifications and modification to the development conditions. Located at 6703 Backlick Rd., Springfield, 22150, on approx. 30,476 sq. ft. of land zoned C-6, HC, SC, and CRD. Tax Map 90-2 ((1)) 25A and 25B. LEE DISTRICT. PUBLIC HEARING.

Roland Joun, Owner/Applicant, reaffirmed the affidavit dated September 15, 2015.

There were no disclosures by Commission members.

Michael Van Atta, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. He noted that staff recommended approval of application SEA 87-L-012-02, but noted that staff did not support the installation of outdoor auto lifts on the site.

Referring to the two court orders prescribed by the Fairfax County Circuit Court, which were included in Appendix 5 of the staff report, Commissioner Hart pointed out that Paragraph 5 in the second order incorporated the terms of the first order. He also noted that Paragraph 11 of the first order articulated that the applicant was required to obtain approval for modifications and/or expanded uses not permitted under the previously-approved Special Exception Amendment (SEA) by November 30, 2013. Commissioner Hart stated that Paragraph 19 of the first order articulated that the terms of this order could not be modified without a written agreement between the associated parties and the subsequent approval of the Court. He then asked whether the Court had approved an extension for the applicant to obtain the necessary approval. A discussion ensued between Commissioner Hart and Mr. Van Atta regarding the provisions articulated in the second Court Order, the extent to which this order permitted an extension to the deadline articulated in the first order, and the possible need for the Court to issue an extension wherein Mr. Van Atta deferred to the applicant for more information on this issue.

Commissioner Lawrence asked about the impact that installing additional impervious surfaces would have on stormwater management throughout the site. He also asked whether staff had discussed treatments of Standing Pools Only (POL) products that would drain from sites that utilized automotive services. Mr. Van Atta explained that since the amount of impervious area that would be installed under the subject application was below the 2,500 square-foot requirement that would necessitate additional stormwater management measures, the applicant was not required to install such measures. Mr. Van Atta also pointed out that Development Condition Number 16 in the revised set of development conditions included provisions to

include fluid separators to capture automotive fluids in conjunction with the storage containers. A discussion ensued between Commissioner Lawrence and Mr. Van Atta regarding the possible inclusion of provisions that would treat POL products on the site, wherein Mr. Van Atta noted that such provisions were not necessary because the intensity of the site would not be modified under the subject application, but noted that the installation of outdoor auto lifts would constitute a change in intensity and staff opposed such a modification. (A copy of the revised set dated December 7, 2015, is in the date file.)

In response to questions from Commissioner Ulfelder, Mr. Van Atta explained the following:

- The installation of additional impervious surface would still be required if the outdoor auto lifts were not installed because such a feature was necessary to improve on-site circulation;
- The proposal did not include additional parking provisions for the site;
- The applicant had been instructed by staff to install a drive aisle for the inspection lanes on the site to improve on-site circulation;
- The installation of additional impervious surface would ensure that the parking provisions did not interfere with the inspection lane, as depicted on Figure 5 on page 7 of the staff report;
- The existing site contained 18 parking spaces;
- The primary complaint raised by neighboring property owners pertained to the excess vehicles that were parked on the site and this issue was articulated in multiple letters of opposition that had been submitted to the Commission; and
- The review conducted by the Department of Code Compliance (DCC) in the summer of 2015 documented excess vehicles parked on the site.

Mr. Joun addressed the concerns raised from Commissioner Hart regarding the two Court Orders in Appendix 5 of the staff report, explaining that the auto lifts and storage trailers that had previously operated on the site had been removed to comply with these orders. He then distributed to the Commission a survey conducted in 2004, which depicted the condition of the subject property prior to the Court Order. Referring to this survey, he provided a brief history of the site, pointing out the locations of the auto lifts and storage containers that had previously been installed on the site. Mr. Joun then explained the following:

- The auto lifts and storage containers that had been located on the site were installed without the approval of a Special Exception (SE);
- The portions of the subject property that would be paved under the proposal were located on the eastern portion of the site and adjacent to the tree-preservation area;

- The applicant had purchased the subject property in December 2004 and had not been aware of any outstanding violations;
- The applicant had removed a number of trees on the property at the request of an insurance company after significant damage had been incurred by vehicles on the site from trees that had fallen during a storm;
- The applicant had been informed in 2009 that the removal of these trees constituted a violation, which was subsequently issued;
- The inspection conducted by the county, in conjunction with the violation in 2009, informed the applicant that the storage containers, the auto lifts, and the existing travel surface area located on the eastern portion of the site were not in compliance with the Zoning Ordinance;
- The applicant had applied for and been issued a license in 2012 to operate a towing service;
- The applicant operated a towing service on the site while pursuing a SE to permit the use of storage containers and auto lifts;
- The applicant had been fined by the Court for not removing the auto lifts and storage containers in the timeframe articulated by the first Court Order, as articulated in Appendix 5 of the staff report;
- The violations cited on the site had been present prior to the applicant's purchase of the subject property;
- The applicant ceased operation of the towing operation on the site after the first Court Order and the subsequent submission of the subject application;
- The operation of the outside auto lifts prior to the issuance of the violation helped mitigate the ongoing parking issues on the site and the removal of these lifts had created significant parking congestion;
- The applicant did not concur with staff's conclusion that the use of auto lifts would increase the intensity of the site because the removal of these lifts had incurred more on-site congestion;
- The site had been utilized as a service station since 1971;
- The use of storage trailers was necessary to accommodate the additional equipment necessary to maintain modern vehicles and the removal of these trailers had caused numerous issues with the operation of the site; and

- The existing condition of the site was subject to parking constraints and additional pavement was necessary to improve on-site circulation.

In conclusion, Mr. Joun reiterated that the existing violations on the site had not been caused by the existing owner of the site and the requested features articulated in the subject application were necessary to ensure the operation of the existing service station on the site. (A copy of the 2004 survey and the license authorizing the towing operation on the site is in the date file.)

A discussion ensued between Commissioner Migliaccio and Mr. Joun regarding the ownership of the site wherein Mr. Joun confirmed that he owned the site.

When Commissioner Migliaccio asked about the condition of the property when it was purchased, Mr. Joun indicated that the auto lifts, the storage containers, and the existing pavement area on the eastern portion of the site had been present when the site was purchased in December 2004.

A discussion ensued between Commissioner Lawrence and Mr. Joun regarding the format of the 2004 survey that had been distributed to the Commission.

Commissioner Hedetniemi expressed concern about the existing parking constraints on the site and asked whether the proposal would improve this issue. Mr. Joun explained that while this was a significant issue during the operation of the towing service on the site, but this service had since ceased operation and the parking provisions had subsequently improved. He added that additional pavement on the eastern portion of the site would improve internal circulation.

Commissioner Migliaccio addressed Commissioner Hedetniemi's concern regarding the organization of the parking on the subject property, stating that the proposal would permit striping and signage to identify the appropriate parking areas.

Chairman Murphy called the first listed speaker and recited the rules for public testimony.

Robert Makheja, 1390 Chain Bridge Road, McLean, representing Backlick Square Business Owners, spoke in opposition to the proposal. He also noted that he was speaking on behalf of approximately 24 neighboring property owners who had submitted letters of opposition regarding the subject application. In addition, Mr. Makeja stated that he was the owner of the shopping center located to the south of the subject property, as well as several other properties in the surrounding area. He also pointed out that the Springfield Chamber of Commerce opposed the proposal. Referring to his written statement, Mr. Makeja gave a brief presentation where he highlighted the following:

- The existing service station had been subject to significant parking congestion on the southern, western, and eastern portions of the site and the uses permitted under the subject application would compound this condition;

- The applicant had been subject to numerous violations due to parking congestion on the site and had not demonstrated a significant commitment to addressing these violations, as shown in numerous photographs with dates ranging from 2009 to 2015;
- The removal of the trees within the tree preservation area on the site had not been authorized and the removal of these trees had incurred a negative visual impact on the surrounding properties;
- The installation of auto lifts would not significantly reduce the parking congestion on the site and such a feature was not supported by staff;
- The previously-approved SE permitted sufficient parking to accommodate an inspection lane for the site, but the insufficient parking provisions on the site created significant congestion;
- The approval of the subject application was not consistent with the recommendations articulated by the Court Orders, as documented in Appendix 5 of the staff report;
- The inclusion of storage containers on the site was not consistent with the Zoning Ordinance because it incurred a negative visual impact on the surrounding properties; and
- The applicant had not demonstrated proper utilization of the storage containers that had been on the site prior to their removal and permitting such features would incur negative environmental impacts.

In conclusion, Mr. Makheja said that the proposal would incur negative impacts to the surrounding properties and the applicant had not sufficiently demonstrated a commitment to abiding by the Zoning Ordinance. (A copy of Mr. Makheja's statement is in the date file.)

A discussion ensued between Commissioner Litzenberger and Mr. Makeja regarding the revitalization efforts that had been conducted for commercial properties located along Backlick Road, wherein Mr. Makeja indicated that such efforts had not utilized public funds.

Commissioner Migliaccio commended Mr. Makeja for coordinating with neighboring property owners on his testimony. However, he pointed out that neither he nor representatives of the surrounding property owners had participated in the Lee District Land Use Committee or in other stages of the land use review process. He then noted that the Lee District Land Use Committee voted in support of the subject application by a vote of 19-0-1, adding that numerous homeowners associations and civic associations had participated in this process. Commissioner Migliaccio announced his intent to defer the decision only on the subject application to a date certain of Thursday, December 10, 2015, adding that he supported the installation of the auto lifts included in the proposal. Mr. Makeja responded to Commissioner Migliaccio's statement, saying that he and the surrounding property owners had not been sufficiently informed about the proposal. He also stated that there was not sufficient notification for the Lee District Land Use Committee meeting that reviewed the subject application. In addition, he said that the Lee

District Land Use Committee had not been presented with a comprehensive analysis of the subject application or the history of the site. A discussion ensued between Commissioner Migliaccio and Mr. Makeja regarding the process for submitting opposition to the proposal prior to the public hearing wherein Commissioner Migliaccio encouraged Mr. Makeja to participate in earlier stages of the review process.

Commissioner Lawrence recommended that Mr. Makeja provide the applicant and the Commission with a list of suggested provisions that would sufficiently address his concerns and those of the neighboring property owners.

Sonia Punj, 1934 Old Gallows Road Ste. 350, Vienna, said that she was a property manager for the Backlick Square Shopping Center and indicated that she opposed the subject application. She stated that the tenants of this shopping center had submitted numerous complaints about the operation of the service station on the subject property due to excessive noise, on-site parking congestion, and disruptive loading/unloading practices by vehicles on the service drive accessing the property. Ms. Punj said that such impacts have negatively impacted the operation of businesses at the shopping center. She then echoed remarks from Mr. Makeja, stating that she had documented numerous instances of parking congestion on the site. Ms. Punj said that her tenants had submitted a letter of objection to the subject application to the Commission prior to the public hearing. She added that numerous complaints had been submitted to DCC and the Fairfax County Police Department since 2009 regarding the applicant's parking policies, but the applicant had not sufficiently resolved this issue and the parking congestion on the site negatively impacted the parking provisions at other sites. In addition, Ms. Punj echoed Mr. Makeja's remarks regarding the applicant's inability to demonstrate a sufficient commitment to abiding by the Zoning Ordinance. She then said that approval of the features articulated in the subject application would not sufficiently mitigate the negative impacts generated by the site. (A copy of the letter of objection from Ms. Punj's tenants is in the date file.)

Chairman Murphy called for speakers from the audience.

Rizkallah Bouharb, 7020 Beverly Lane, Springfield, said he was the manager of the existing service station on the site and spoke in support of the subject application. He addressed the concerns raised by Mr. Makeja and Ms. Punj, stating that the applicant had been in conflict with these individuals due to an issue regarding the presence of utility lines that traversed the subject property. Mr. Bouharb also noted the need for the auto lifts, stating that this feature improved the efficiency of the services offered at the site.

When Chairman Murphy asked about the services that would be provided at the site if the auto lifts were installed, Mr. Bouharb indicated that these lifts were primarily utilized for oil changes and tire changes. He then reiterated that auto lifts improved the efficiency of the services provided at the site.

Commissioner Migliaccio asked for additional information about the applicant's policies regarding the parking provisions on the site and how these policies discourage customers from parking in neighboring properties. Mr. Bouharb indicated that he informed customers that parking on neighboring properties was not permitted, reiterating that such practices had created

conflicts with neighboring property owners. Commissioner Migliaccio suggested that additional provisions be added to the development conditions to address this issue, such as the installation of signage to direct customers to the appropriate parking areas. Mr. Bouharb then indicated that the amount of parking congestion on the site had been reduced since the applicant ceased operation of the towing service on the site.

Commissioner Ulfelder echoed remarks from Commissioner Hart regarding the possible need for an additional court order to extend the deadline articulated in Paragraph 11 of the first Order. A discussion ensued between Commissioner Ulfelder and Mr. Van Atta, with input from Kristen Abrahamson, ZED, DPZ, regarding the timeframe for which this issue could be resolved with the assistance of the County Attorney.

When Commissioner Migliaccio asked whether the Commission was precluded from moving on the subject application prior to the resolution of the issue regarding the deadline articulated in Paragraph 11 the first Court Order, Ms. Abrahamson indicated that the Commission could still move on the subject application. A discussion ensued between Commissioner Ulfelder and Ms. Abrahamson regarding the legal implications of moving on the subject application without resolving this issue wherein Ms. Abrahamson stated that staff would coordinate with the County Attorney to address this issue.

Commissioner Hart asked whether Paragraph 19 of the first Court Order required approval from the Fairfax County Circuit Court to extend the deadline for the applicant to obtain an SEA. Mr. Joun explained that the applicant had already satisfied this Court Order because the storage containers and auto lifts, which had incurred the initial violations, had been removed. He then stated that approval of the subject application would permit the installation of these previously-removed features. Commissioner Hart reiterated his concern regarding the deadline for obtaining the SEA articulated in Paragraph 11 and whether the approval of a judge was needed to authorize an extension of this deadline, stating that he favored coordinating with the County Attorney to address this issue.

Commissioner Flanagan expressed concern about the applicant's commitment to addressing the violations on the site, referring to the testimony from Mr. Punj and Mr. Makeja in which instances of repeated violations were documented. Mr. Van Atta explained that while the applicant had been cited for multiple violations, the majority of these violations pertained to the parking congestion on the site and the subsequent modifications to the conservation easement. He added that DCC had not documented other violations during the review of the subject application. A discussion ensued between Commissioner Flanagan and Mr. Van Atta, with input from Ms. Abrahamson, regarding the applicant's commitment to abiding by the development conditions prescribed by the subject application, the enforcement mechanisms for these conditions, and the limitations of these enforcement mechanisms wherein Mr. Van Atta indicated that the development conditions would provide additional guidance for DCC and neighboring property owners in assessing the site for future violations.

There being no more speakers, Chairman Murphy called for a rebuttal statement from Mr. Joun, who indicated that the applicant would abide by the necessary provisions when operating the auto lift and the storage containers on the site. He also reiterated that the applicant had been in conflict with neighboring property owners.

Responding to questions from Chairman Murphy, Mr. Joun stated that he concurred with staff's recommendation to approve the subject application. However, he said that he did not support the provisions articulated in Development Condition Number 13 because it would prohibit the installation of outdoor auto lifts on the site. He also indicated that he did not support Development Condition Number 15, which required the installation of an automotive fluid separator, because he did not have sufficient information on the manner in which such a feature would be implemented.

Commissioner Migliaccio indicated that he did not support removing Development Condition Number 15. A discussion ensued between Commissioner Migliaccio and Mr. Joun regarding the applicant's ability to abide by this condition and the feasibility of implementing the features articulated in this condition wherein Commissioner Migliaccio said that staff would coordinate with the applicant to ensure that the necessary provisions for abiding by this condition were implemented.

There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Migliaccio for action on this case.

(Begin Verbatim Transcript)

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Chairman Murphy: Public hearing is closed; Mr. Migliaccio.

Commissioner Migliaccio: It might not be a shock to anyone, but I don't think we're ready tonight to vote on this. We heard from the neighbor and there are many issues that were brought up. We heard from Mr. Hart and Mr. Ulfelder regarding the legal issue that needs to be taken care of – at least looked at – at some point. And there's some other development conditions that may be going on to provide better screening and other things; and the board-on-board for the back for this dumpster needs to be brick; and a few other items that we need to take care of. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION DEFER DECISION ONLY FOR SEA 87-L-012-02 TO A DATE CERTAIN OF DECEMBER 10TH, 2015.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant, and I presume WITH THE RECORD REMAINING OPEN FOR COMMENT.

Commissioner Migliaccio: Yes.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the motion? All those in favor of the motion to defer decision only on SEA 87-L-012-02 to a date certain of December 10th with the record remaining open for comment, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

(The motion carried by a vote of 12-0.)

(End Verbatim Transcript)

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The final public hearing was in the Springfield District; therefore, Chairman Murphy relinquished the Chair to Vice Chairman de la Fe.

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SE 2015-SP-022 – EILEEN MEADE d/b/a MEADE FAMILY DAYCARE – Appl. under Sect(s). 6-105, 6-106 and 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 9697 South Run Oaks Dr., Fairfax Station, 22039, on approx. 11,487 sq. ft. of land zoned PDH-2. Tax Map 97-1 ((6)) 166. SPRINGFIELD DISTRICT. PUBLIC HEARING.

Eileen Meade, Applicant/Title Owner, reaffirmed the affidavit dated May 4, 2015.

There were no disclosures by Commission members.

Chairman Murphy announced his intend to defer the decision only for the subject application at the conclusion of the public hearing to a date certain of Thursday, January 21, 2016, to provide sufficient time for the Commission to review the testimony that had been submitted.

Laura Arseneau, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. She noted that staff recommended approval of application SE 2015-SP-022.

When Commissioner Murphy asked about the extent to which the revised set of Development Conditions dated December 7, 2015, had been modified compared to the previous set, Ms. Arseneau confirmed that the only modification to this set was the addition of Development Condition Number 13, which required that storage structures on the subject property remain locked during the prescribed hours of operation for the proposed home child care facility. (A copy of the revised set of Development Conditions is in the date file.)

Ms. Meade gave a brief presentation regarding the subject application wherein she explained the following:

- The bylaws of the South Run Oaks Homeowners Association (SROHOA) permitted the operation of a home-based business, provided that the business was appropriately licensed and consistent with the character of the community;
- The applicant had been living in the dwelling unit on the subject property since November 2014;
- The surrounding community had not initially voiced any concerns to the applicant regarding the operation of a home child care facility on the site, but subsequent interactions with neighboring property owners revealed that some residents opposed this use;
- The applicant had coordinated with neighboring property owners to address their concerns;
- The demand for quality child care services in the surrounding area was growing and the applicant was committed to providing such care;
- The operation of the home child care center on the site would not significantly impact the existing family-oriented character of the surrounding community;
- The applicant would utilize the driveway on the site for drop-off and pick-up;
- The applicant would specify the hours in which the children at the proposed home child care facility would utilize the backyard play area and these hours would be shared with neighboring residents;
- The purpose of the subject application was to permit a maximum enrollment of 12 children and 2 non-resident employees at the proposed child care facility;
- The applicant did not intend to care for a total of 12 children at all times;
- The presence of two non-resident employees would provide additional flexibility in operating the proposed home child care facility in an efficient manner; and
- The applicant would monitor the pick-up/drop-off procedures and coordinate with parents to ensure that these procedures were followed.

Ms. Meade acknowledged the concerns that had been raised by residents of the surrounding community prior to the public hearing, but reiterated that these residents had not directly coordinated with her to address these issues. She also noted that she had been operating a home child care facility on the subject property since December 2014 and the impact of this facility on the community was minimal. In addition, Ms. Meade stated that she was committed to coordinating with the residents of the surrounding community to address their concerns.

Replying to questions from Commissioner Murphy, Ms. Meade said the following:

- The applicant was aware of the letters in opposition to this application that had been submitted to the Commission prior to the public hearing;
- The applicant had reviewed the bylaws of the SROHOA prior to operating the existing home child care center on the site, which cared for a maximum of seven children;
- The bylaws of the SROHOA did not articulate a limit for the number of children that could be cared for at a home child care facility, but the SROHOA was in the process of reviewing its policy regarding such facilities;
- The applicant had not consulted with the Board of Directors for the SROHOA prior to submitting the subject application; and
- The applicant had reviewed the staff report, but had not reviewed the revised set of Development Conditions.

Commissioner Murphy encouraged the applicant to review the Development Conditions during the deferral period, noting that the applicant would be required to abide by these conditions if the subject application were approved.

Commissioner Hart said that the issues articulated by the opposition that had been expressed for the subject application pertained to concerns regarding rising insurance premiums due to increased hazards associated with the tot lot. He then asked whether the children attending the proposed home child care center would utilize this tot lot. Ms. Meade explained that the applicant had previously utilized the tot lot and was not made aware of any concerns regarding this practice, but noted that such concerns had been forwarded to her. She then indicated that the children at her home child care center would primarily utilize the backyard of the subject property as a play area.

Commissioner Hart explained that the Commission could not consider the covenants of a community or the bylaws of a homeowners association when ruling on an application, stating that the Commission did not have the authority to enforce such provisions. He added that the SROHOA had indicated through the various opposition letters, which had been submitted to the Commission prior to the public hearing, that a limit of seven children for a home child care facility in the community was being considered. Commissioner Hart said that if the SROHOA adopted this policy, then the applicant was required to abide by it and the Commission's recommendation for approval for the subject application would not supersede this policy. He also suggested that the applicant coordinate with the SROHOA and an attorney to address this issue during the deferral period.

Commissioner Hurley concurred with Commissioner Hart's concerns regarding the covenants and the policies adopted by a homeowners association for a community. She added that prohibiting the use of the tot lot by children attending the proposed home child care facility would alleviate some of the concerns raised by the surrounding neighborhood. She also echoed

Commissioner Hart's suggestion that the applicant coordinate with the SROHOA to address this and other outstanding concerns.

In reply to questions from Commissioner Hurley, Ms. Meade said the following:

- The majority of the children attending the home child care facility would be dropped off or picked up from the site by vehicle;
- The number of vehicles that would access the site for pick-up/drop-off varied because some of the children attending the facility were siblings;
- The existing non-resident employee at the facility utilized street parking along the frontage of the site;
- The street parking along the frontage of the subject property could accommodate two vehicles;
- The applicant's car was typically parked in the driveway, but the driveway was large enough to accommodate two vehicles for pick-up/drop-off;
- The applicant's car could be parked on the street to provide additional space in the driveway for pick-up/drop-off if such space was needed to alleviate the concerns of surrounding residents;
- The applicant favored reserving at least one space of street parking for customers;
- The applicant understood that Development Condition Number 7 required that all pick-up/drop-off procedures associated with the home child care facility occur in the driveway; and
- The subject property was not located near areas utilized by school buses for pick-up/drop-off and the operation of the proposed home child care facility would not interfere with this procedure.

When Commissioner Murphy asked about the parking availability for South Run Oaks Drive, Ms. Meade confirmed that this street was a public street.

A discussion ensued between Commissioner Ulfelder and Ms. Meade regarding the size of the South Run Oaks community and the presence of other home child care facilities in this community.

Referring to the plans of the basement area included in the Statement of Justification in Appendix 3 of the staff report, Commissioner Flanagan pointed out that this area included only one emergency exit. He then expressed concern about the emergency evacuation procedures for such an area and the safety of children in the event such an evacuation was necessary. Ms. Meade noted that the proposed home child care facility would utilize collapsible cribs to

facilitate the evacuation of children. A discussion ensued between Commissioner Flanagan and Ms. Meade, with input from Ms. Abrahamson, ZED, DPZ, regarding the number of stairs present for the emergency exit wherein Ms. Abrahamson said that the plans of the area in Appendix 3 was not rendered to the appropriate scale.

Commissioner Flanagan expressed concern about the size and location of the window in the basement, as shown in the plans of the basement area included in the Statement of Justification in Appendix 3 of the staff report, because it would not facilitate an emergency evacuation procedures for such an area. Ms. Arseneau pointed out that this window was not part of the emergency egress, noting that this egress included only the emergency exit door. In addition, Ms. Abrahamson indicated that since this basement area was open and did not have numerous walls, the existing emergency egress for this area was consistent with the County Code. A discussion ensued between Commissioner Flanagan and Ms. Abrahamson regarding the reason that smaller windows in open basement areas, such as the one being proposed in the subject application, were determined to be appropriate wherein Ms. Abrahamson indicated that the provisions articulated in the proposal were consistent with similar home child care facilities throughout the County.

Commissioner Flanagan expressed concern regarding the language of Development Condition Number 6, which permitted a maximum of two non-resident employees at the proposed home child care facility from 7:00 a.m. to 6:00 p.m., because it indicated that an additional employee would not be required to care for a greater number of children. Ms. Abrahamson explained that this language was appropriate because the number of children that would be cared for at the facility would vary and the proposed language provided greater flexibility for the applicant as the number of children being cared for fluctuated. She also pointed out that the licensing procedure conducted by the State of Virginia for home child care facilities would determine whether an additional non-resident employees was required.

Referring to Commissioner Flanagan's concerns regarding the safety of the children attending the proposed home child care facility and the emergency evacuation procedures for the basement area, Commissioner Murphy asked whether these concerns were sufficiently addressed by the County Code. Ms. Abrahamson confirmed that the County Code sufficiently addressed these issues.

Vice Chairman de la Fe called the first listed speaker.

Daniel Streich, 3201 Jermantown Road, Suite 600, Fairfax, representing the SROHOA, spoke in opposition to the subject application. He then gave a presentation during which he explained the following:

- The SROHOA conducted a meeting on December 1, 2015, wherein a majority of the residents attending voted to align themselves with the Board of Director's resolution to oppose the proposal;
- The Virginia Property Owners Association Act (VPOAA), which was passed by the General Assembly in 2013 and enacted on July 1, 2013, granted statutory authority to homeowners associations to administer reasonable restrictions on home-based businesses operating in their respective communities;

- The approval of the subject application would undermine the authority granted by the VPOAA to regulate home-based businesses, such as a home child care facility;
- The SROHOA did not object to the operation of a home child care facility on the site, but favored limiting the number of children attending this facility to seven, which was consistent with the County's by-right provisions for such facilities;
- The determination articulated by Commissioner Hart that the Commission could not consider the covenants of a community or the bylaws of a homeowners association when ruling on an application was not accurate because of the statutory provisions granted to homeowners associations by VPOAA;
- The Planning Commission and the Board of Supervisors could only exercise the powers conferred or implied by the General Assembly and the approval of the subject application despite the SROHOA's opposition was not consistent with these powers;
- The Planning Commission and Board of Supervisors did not have the authority to overrule the determination rendered by the SROHOA, which was made with the statutory authority granted to it by the VPOAA; and
- The approval of the subject application, despite the objection of the SROHOA, would render the proposed home child care facility a non-harmonious use, as defined by the Zoning Ordinance.

(A copy of Mr. Streich's presentation is in the date file.)

A discussion ensued between Commissioner Murphy and Mr. Streich regarding the authority granted by the State of Virginia to homeowners associations in regulating home-based businesses, the authority granted by the State of Virginia to local governments to regulate home child care facilities, and applicability of such authority on the subject application wherein Mr. Streich reiterated that the SROHOA did not object to the operation of a home child care facility on the site, provided its operations were consistent with the County's by-right provisions for such facilities, which limited the number of children attending the facility to seven.

Addressing Mr. Streich's remarks regarding the SROHOA's authority under the VPOAA to regulate home-based businesses, Commissioner Hart explained that the approval of the subject application did not negate a homeowners association's authority to establish regulations and covenants. He added that issues pertaining to the enactment and enforcement of such policies was under the purview of the courts. In addition, he said that the provisions of the VPOAA did not modify the standards and guidelines articulated in the Zoning Ordinance for determining whether a use was harmonious. A discussion between Commissioner Hart and Mr. Streich ensued regarding the extent to which a Planning Commission was required to consider the rulings of a homeowners associations and the scope of the VPOAA wherein Commissioner Hart reiterated that the SROHOA had the authority to administer covenants in its community, but the Commission could not enforce these covenants.

A discussion ensued between Commissioner Litzenberger and Mr. Streich regarding the SROHOA's opposition to the subject application and the procedures in which this determination was made.

Commissioner Sargeant pointed out that the Board of Supervisors had the final authority to approve the subject application and the Commission's authority was limited to making a recommendation. He then recommended that Mr. Streich voice his concerns regarding the extent of the SROHOA's authority, as it pertained to the VPOAA, to the Board of Supervisors. Mr. Streich indicated that he intended to submit these concerns to the Board of Supervisors, but noted the importance of the Planning Commission's recommendation.

When Commissioner Ulfelder asked about the effective date of the SROHOA's resolution to oppose the subject application, Mr. Streich indicated that this resolution was made effective on December 1, 2015.

Commissioner Ulfelder pointed out that the SROHOA's reasons for opposing the proposed home child care facility, as articulated in its resolution, were due to concerns regarding increases in noise, increased non-resident traffic throughout the community, increased street parking along South Run Oaks Drive, and possible negative impacts on surrounding properties. He then explained that these impacts were considered by staff during its review of the proposal and were subsequently addressed in the staff report. In addition, he said that the Commission considered these factors, along with staff's analysis, in rendering a decision. Commissioner Ulfelder asked for additional information on the SROHOA's conclusion that permitting more than seven children to attend the proposed home child care facility on the site would incur an impact significant enough to warrant the restrictions articulated in its resolution. Mr. Streich stated that the SROHOA concurred with the County's by-right provisions regarding home child care facilities and noted that residents of the surrounding community would provide additional information regarding their concerns, as they pertained to the factors articulated in the SROHOA's resolution.

Commissioner Lawrence aligned himself with Commissioner Litzenberger's concerns regarding the SROHOA's procedures for determining its opposition to the subject application. He also expressed concerns regarding the extent to which these procedures conflicted with those of the land use review process conducted by the County.

Referring to the SROHOA's reasons for opposing the subject application that were articulated in its statement, which included concerns pertaining to the proposal's impact on street parking, Commissioner Hurley pointed out that Development Condition Number 7 required that pick-up/drop-off occur in the driveway. She then asked whether this condition addressed the SROHOA's concerns regarding this issue. Mr. Streich concurred that this condition did address this issue, but expressed concern regarding the enforcement of this condition.

When Commissioner Hurley asked for additional information regarding the SROHOA's concern regarding the impact that five additional children at the home child care facility on the surrounding community, Mr. Streich deferred to the testimony of residents living in the community for such information.

Commissioner Hurley asked for additional information on the extent of the noise impact that would be incurred by the proposal. Mr. Streich deferred to the testimony of residents living in the community, but stated that his residence was located in close proximity to a home child care facility that cared for up to 12 children and noted that the noise generated by such a use was significant.

When Commissioner Murphy asked whether the SROHOA had reviewed the revised set of Development Conditions for the proposal, Mr. Streich indicated that the SROHOA had not yet reviewed this document. Commissioner Murphy then explained the advantages to having a Special Exception (SE) for a home child care facility, noting that a facility operating by-right did not include development conditions. He added that these conditions provided an additional mechanism for enforcing the provisions that would mitigate the facility's impact on the surrounding community and encouraged the SROHOA to take this into consideration when reviewing the proposal.

Chris Chessnoe, 9703 South Oaks Drive, Fairfax Station, spoke in opposition to the subject application. He said that his residence was located approximately two lots to the east of the subject property. He then explained the following:

- The operation of the existing home child care center on the site had impacted the surrounding community and approval of the subject application would intensify this impact;
- The operation of the existing facility incurred a significant impact on street parking along South Run Oaks Drive, which affected sight lines at the nearby intersection with Oak Hollow Lane, and approval of the subject application would intensify this impact;
- The sidewalk along South Run Oaks Drive was frequently obstructed due to vehicles parked on the driveway and along the street at the site, which was prohibited by the County Code;
- The proposal would increase the amount of noise and traffic generated by the site;
- The customers of the home child care facility did not always utilize the driveway or the street along the frontage of the subject property during pick-up/drop-off, which negatively impacted nearby property owners;
- The area near the subject property had multiple bus stops for school-age children and the location of the site, as depicted in Figure 1 on page 1 of the staff report, was not accurate; and
- The review conducted by staff regarding the proposal's impact on nearby bus stops was not sufficient and safety concerns associated with this impact had been documented.

(A copy of Mr. Chessnoe's statement is in the date file.)

Commissioner Murphy encouraged Mr. Chessnoe to review the revised set of Development Conditions during the deferral period.

When Commissioner Hart asked whether Mr. Chessnoe's comments regarding the accuracy of the depiction on Figure 1 on page 1 of the staff report were correct, Ms. Arseneau confirmed that Mr. Chessnoe was correct, explaining that the subject property was not accurately identified in this depiction.

Ryan Jacob, 9606 Burnt Oak Drive, Fairfax Station, voiced support for the proposal. He stated that his child attended the existing home child care facility on the site and noted the quality of the service provided by the applicant, adding that there were residents in the community that supported such a use. Mr. Jacob acknowledged that concerns had been raised regarding the proposal's impact on insurance premiums due to the applicant's use of the tot lot, but noted that this issue had been sufficiently addressed. He added that he favored permitting the applicant to continue utilizing this tot lot. In addition, Mr. Jacob pointed out that the subject property had sufficient parking provisions, noting the applicant's commitment to keeping the driveway clear so that it could be utilized for pick-up/drop-off. He said that he did not concur with the SROHOA's resolution, adding that the conclusions within this resolution were not accurate. Mr. Jacob addressed concerns raised from previous speakers regarding the proposal's impact on bus stops, stating that the operation of a home child care facility on the site had not significantly affected these stops. In addition, he said that the proposed home child care facility would improve the character of the surrounding neighborhood.

Answering questions from Commissioner Murphy, Mr. Jacob explained that the residents of the surrounding community had received an email from the SROHOA articulating its concerns regarding the subject application and this email included concerns regarding the rise in insurance premiums due to the applicant's use of the tot lot. He also clarified that the bus stops located near the subject property were utilized by Fairfax County Public Schools.

A discussion ensued between Commissioner Ulfelder and Mr. Jacob regarding the availability of child care services in the South Run Oaks community and the surrounding area wherein Mr. Jacob indicated that there were no other home child care facilities operating within the community besides the one being operated by the applicant.

A discussion ensued between Commissioner Strandlie and Mr. Jacob regarding the extent of the SROHOA's concern that homeowners association fees would increase due to the impact of the proposal wherein Mr. Jacob said that he favored additional coordination between the applicant and the SROHOA to address this issue.

In response to questions from Commissioner Hart, Mr. Jacob described the procedure utilized by the SROHOA that notified him of the December 1, 2015, meeting in which the resolution regarding the subject application was adopted; stating that he was notified approximately two weeks prior to this meeting through an email. He indicated that this type of notification was a standard practice by the SROHOA and such meetings were conducted on a monthly basis.

Shawn Grunzke, 9600 Laurel Oak Place, Fairfax Station, voiced opposition to the subject application. He aligned himself with remarks from Mr. Streich regarding the impact of the proposal on the surrounding neighborhood. He said that this proposal was discussed at the SROHOA meeting on December 1, 2015, and issues such as liability concerns due to the applicant's use of the tot lot were reviewed. In addition, Mr. Grunzke stated the location of the subject property made it inappropriate for a home child care center due to its proximity to Ox Road, which was the primary access point for the community. He also echoed concerns from Mr. Chessnoe regarding the site's proximity to bus stops, stating that the operation of a home child care center would incur significant traffic congestion.

A discussion ensued between Commissioner Hedetniemi and Mr. Grunzke regarding the SROHOA meeting that occurred on December 1, 2015, and the procedure by which homeowners were notified of this meeting.

Commissioner Sargeant recommended that staff coordinate with the County Attorney to determine whether the SROHOA's concern, as articulated in the resolution passed on December 1, 2015, regarding its liability for the applicant's use of the tot lot was warranted and whether prohibiting the applicant's use of this tot lot sufficiently addressed this concern.

Jane Waddell, 9708 Spanish Oak Court, Fairfax Station, spoke in opposition to the subject application, aligning herself with remarks from Mr. Grunzke regarding the traffic impact of the proposed home child care facility on the surrounding area. She pointed out that South Run Oaks Drive was subject to safety hazards due to the speed of vehicles entering the community from Ox Road. In addition, Ms. Waddell echoed remarks from Mr. Jacob regarding the notification SROHOA's procedures for its meetings and the frequency with which these meetings were conducted. She also said that the SROHOA's concerns regarding legal liability for the applicant's use of the tot lot was discussed at multiple SROHOA meetings and during these discussions, it was revealed that this issue had occurred in other communities.

A discussion ensued between Commissioner Hurley and Ms. Waddell regarding the SROHOA's liability concerns due to the applicant's use of the tot lot, the extent to which liability issues had been discussed, and the applicant's commitment to cease utilizing the tot lot.

In reply to questions from Commissioner Hurley, Ms. Waddell explained that her concern regarding the proposal's traffic impact pertained to the speed of the vehicles entering the community from Ox Road and the manner in which vehicles exited the community after drop-off/pick-up, saying that she had observed numerous instances where customers of the existing home child care facility entered and exited the community in an unsafe manner. She also echoed remarks from previous speakers regarding the proposal's noise impact on the surrounding community.

Terrance Moran, 8064 Oak Crest Lane, Fairfax Station, voiced opposition to the proposal. He echoed concerns from previous speakers regarding the possible liability issues incurred by the SROHOA due to the applicant's use of the tot lot, but indicated that he supported the applicant's commitment to cease utilizing this tot lot. In addition, Mr. Moran stated that the community had not been sufficiently informed about the potential impact of the subject application, adding that the applicant had not attended the SROHOA meeting on December 1, 2015, wherein this

application was discussed. He said that he did not object to the operation of a home child care facility on the site, but expressed concern about the impact that increasing the number of children cared for at this facility would incur.

Commissioner Murphy suggested that Mr. Moran review the revised set of Development Conditions during the deferral period.

A discussion ensued between Commissioner Litzenberger and Mr. Moran regarding the impact of SROHOA resolutions on the community, the availability of child care services in the surrounding area, and the character of the South Run Oaks community wherein Mr. Moran indicated that the existing covenants of the SROHOA permitted the operation of home-based businesses, provided they were authorized by the County.

Commissioner Strandlie said that she did not favor permitting the applicant's use of the tot lot in the community and supported articulating this prohibition in the Development Conditions. A discussion ensued between Commissioner Strandlie and Mr. Moran regarding the extent to which the tot lot was inspected to ensure its proper use and the safety of its equipment wherein Mr. Moran indicated that the SROHOA included personnel that regularly inspected the tot lot.

Commissioner Hart echoed Commissioner Murphy's remarks regarding the advantages of approving an SE for a home child care facility compared to operating such a facility by-right, pointing out that the Development Conditions provided an additional mechanism for enforcing the policies prescribed to mitigate the facility's impacts. He also stated that prohibiting the applicant's use of the tot lot could be articulated in the Development Conditions and similar conditions had been utilized in other applications. A discussion ensued between Commissioner Hart and Mr. Moran regarding the surrounding community's outstanding concerns associated with the proposal, the applicant's commitment to addressing these concerns, and the impact of home child care facilities authorized by an SE compared to those operating by-right, wherein Mr. Moran reiterated that the applicant had not attended the SROHOA's meeting on December 1, 2015, in which this application was discussed.

Vice Chairman de la Fe pointed out that the covenants in most communities, including South Run Oaks, permitted the operation of home-based businesses, provided these businesses conformed to the policies prescribed by Zoning Ordinance. However, he noted that these policies were subject to subsequent modifications and such modifications were not always made in conjunction with changes to community covenants. Vice Chairman de la Fe then discouraged the SROHOA from rendering decisions on specific cases, such as the subject application, and favored retaining the existing policies articulated in the covenants. A discussion ensued between Vice Chairman de la Fe and Mr. Moran regarding the challenges associated with the subject application wherein Vice Chairman de la Fe stated that the Commission did not have the authority to negate established covenants.

Victor Kernus, 9701 South Run Oaks Drive, Fairfax Station, spoke in opposition to the proposal, aligning himself with concerns raised by previous speakers regarding the proposal's impact on the traffic and parking on the surrounding area. He said that his property was located adjacent to the subject property. He also indicated that there had been instances where vehicles were parked along the frontage of his property or in a manner that blocked portions of the sidewalk. In

addition, Mr. Kernus echoed remarks from previous speakers regarding the proposal's impact on the safety of the children utilizing the bus stops located near the subject property, adding that this area was already subject to traffic from parents dropping off or picking up children from these bus stops. He also echoed remarks from Mr. Moran regarding the applicant's commitment to cease utilizing the tot lot, stating that he supported this commitment. He added that he supported Development Condition Number 7, which required that drop-off/pick-up occur in the applicant's driveway, but expressed concern regarding the enforcement of this condition.

A discussion ensued between Commissioner Hedetniemi and Mr. Kernus regarding the advantages to approving an SE with development conditions compared to permitting the home child care facility on the site to operate by-right wherein Mr. Kernus acknowledged that the provisions articulated in the Development Conditions for the subject application would not be applicable if the applicant continued operating the facility by-right.

There being no more speakers, Vice Chairman de la Fe called for a rebuttal statement from Ms. Meade, who said the following:

- The concerns raised by Mr. Kernus regarding vehicles blocking the sidewalk that ran along the frontage of the subject property would be addressed by instructing the parents of the children attending the proposed home child care facility to park in a manner that would not block this area;
- The distance between the subject property and Mr. Kernus' property was significant and such distance was sufficient to limit the proposal's impact his property;
- The applicant had not documented instances where vehicles associated with the operation of the existing home child care facility on the site parked along the frontage of Mr. Kernus' property and the parents of customers would be informed that such practices were prohibited;
- The issue regarding the speed of vehicles entering the community from Ox Road was not generated by the operation of the home child care facility on the site;
- The applicant had and would continue to coordinate with the parents of the children attending the facility to ensure they exercised caution when accessing the site from Ox Road;
- The applicant would coordinate with the neighboring residents to address their concerns;
- The safety concerns raised by speakers regarding traffic around the bus stops located near the subject property were not generated by the operation of the home child care facility;
- The applicant had signed up for the SROHOA's email notification procedures, but did not regularly receive notifications in a timely manner;

- The applicant had not attended the SROHOA meeting on December 1, 2015, due to illness;
- The existing home child care facility on the site had only one non-resident employee and permitting an additional non-resident employee would improve the operation of this facility;
- The applicant had not sufficiently coordinated with the SROHOA to address their concerns, but would continue such efforts to ensure that residents of the community were informed about the policies of the home child care facility on the site; and
- The proposed home child care facility would operate on a full-time schedule and the trips generated by the facility's pick-up/drop-off procedures would not exceed 12 vehicles per traffic period.

When Commissioner Murphy asked whether the existing home child care facility would continue operation if the subject application were denied, Ms. Meade indicated that the applicant would continue operating this facility under the provisions permitted by a by-right use.

There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Vice Chairman de la Fe closed the public hearing and recognized Commissioner Murphy for action on this case.

(Begin Verbatim Transcript)

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Vice Chairman de la Fe: The public hearing is closed. This is in the Springfield District; Mr. Murphy.

Commissioner Murphy: I want to welcome Ms. Arseneau back to the Planning Commission. Thank you, Mr. Chairman. First of all, bottom line is I have a lot of respect for those citizens who sacrifice their time and talents to get involved with the homeowners association and try to navigate that association through sometimes choppy waters. And we try to work very closely with homeowners associations in helping them navigate the ship. The reason I brought up the development conditions and I wanted people to look at the development conditions was, if my scenario that I just went through with the applicant and, if the Board were on the other hand to approve the application, and it wasn't – it didn't address some of the neighbors' concerns, they'd say why didn't they do something about that at the Planning Commission? And that's what we're trying to do – at least what I'm trying to do tonight. I don't know what the Board is going to do. I don't know what the Planning Commission is going to do, but I have an obligation to send the best application I can to the Board of Supervisors and to ensure that as many of your concerns that you stated here tonight are addressed. And the only way to do this is to have this open forum. You have the development conditions. Take them home with you. Take a look at them. If the Board were to approve this application, notwithstanding my motion or the recommendation by this Planning Commission, are things in there that are stated in the revised development

conditions with that one additional condition? Do they address your concerns? However, I would caution you that the development conditions have to be realistic and they have to be reasonable. And the courts have decided on that. So we can't say no parking on the street when it's a public street. You can park on a public street if your car is validly registered, okay. So think about some of the things that you spoke about tonight. Take a look at the development conditions and what's going on now, and how those development conditions help address some of the issues that brought you here tonight, because some of the things that are going on in the neighborhood you think can be approved. That's all we're trying to do. And I echo Mr. Sargeant's comments to the staff to please take this to the County Attorney and let's have him and his staff weigh in on this. So therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION DEFER DECISION ON SE 2015-SP-022 TO A DATE CERTAIN OF JANUARY 21ST, WITH THE RECORD REMAINING OPEN FOR COMMENT.

Commissioner Hart: Second.

Vice Chairman de la Fe: Seconded by Commissioner Hart. Is there any discussion? Hearing and seeing none, all those in favor please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? Motion carries.

(The motion carried by a vote of 12-0.)

(End Verbatim Transcript)

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At the conclusion of the case, Chairman Murphy resumed the Chair.

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The meeting was adjourned at 12:41 a.m.

Peter F. Murphy, Chairman

James R. Hart, Secretary

Audio and video recordings of this meeting are available at the Planning Commission Office,
12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Jacob Caporaletti

Approved on: May 18, 2016



John W. Cooper, Clerk
Fairfax County Planning Commission